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July 25, 2008

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**Hand Delivery**

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: DOCKET NO. 070691-TP - Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC**

**DOCKET NO. 080036-TP - Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.**

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CLK \_\_\_\_\_

Dear Ms. Cole:

Enclosed for filing in the above-referenced consolidated Dockets, please find the original and 7 copies of Bright House Networks, LLC's Prehearing Statement, along with a diskette containing a copy of the document in Word format.

Thank you for your assistance with this filing. If you have any questions whatsoever,

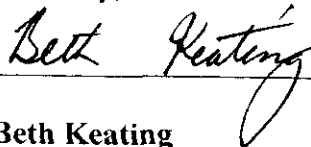
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Ms. Ann Cole  
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please do not hesitate to contact me.

Sincerely,



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**Beth Keating**  
**AKERMAN SENTERFITT**  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32302-1877  
Phone: (850) 224-9634  
Fax: (850) 222-0103

Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC

Docket No. 070691-TP

In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

Docket No. 080036-TP

Filed: July 25, 2008

**PREHEARING STATEMENT**

Pursuant to the Order Establishing Procedure, Order No. PSC-08-0213-PCO-TL, issued April 10, 2008, as modified by Orders Nos. PSC-08-0325-PCO-TP and Order No. PSC-08-0344-PCO-TP, Bright House Networks Information Services (Florida) LLC and Bright House Networks, LLC (collectively, "Bright House") by and through its undersigned attorneys hereby submits its Prehearing Statement.

A. Known Witnesses

Timothy M. Frendberg – All Issues - Direct Testimony

Coleman D. Bazelon – All Issues - Direct and Rebuttal Testimony

B. Known Exhibits

Bright House intends to sponsor the following exhibits:

Bazelon (Direct)      CDB – 1      Curriculum Vitae

   CDB – 2      Consultations

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C. Basic Position

Verizon's practice of initiating retention marketing efforts based on proprietary information Bright House must provide to Verizon's wholesale division to start the number porting process constitutes anticompetitive behavior in violation of Section 364.01(4)(g), Florida Statutes. By using proprietary information obtained from Bright House to target retention marketing efforts during the critical period in which a customer has decided to leave Verizon, but has not yet transitioned to Bright House's network, Verizon also gives "undue" and "unreasonable" preference to itself, in violation of Section 364.10, Florida Statutes. In addition, the special retention offers and bonuses, which are only made available to customers that Bright House has identified to Verizon, constitute "undue" and "unreasonable" preferences to the customers receiving them, *i.e.*, they constitute unreasonable discrimination by Verizon among its own customers. Moreover, Verizon's retention marketing practice directly interferes with the porting of subscribers' numbers from Verizon's network to Bright House's network, contrary to the clear requirements of Rule 25-4.082, Florida Administrative Code. The Commission should, therefore, require Verizon to immediately cease all retention marketing efforts that are based on disconnect and number portability orders. The Commission should further require Verizon to institute a 10-day "quiet" period following a customer's initial transfer from Verizon's network to Bright House.

D. – F. Issues

1. Is Verizon obtaining an undue or unreasonable advantage by marketing a customer when receiving a local service request to port a subscriber's telephone number for Bright House or Comcast, in violation of Section 364.10(1)? If so, how is Verizon doing so?

**BHN:** Yes. When Verizon receives Bright House's proprietary information indicating that a customer is about to leave, Verizon is in a unique position to exploit that information for its own competitive advantage. When it does so (by retention marketing to those customers) Verizon gives undue preference to itself. Third-party carriers operating in the market do not have any comparable access to the information that the customer is leaving. For its part, Bright House cannot implement "retention marketing" for a customer that has yet to fully transition to Bright House's network. As a result, during the unique time period immediately following the submission of the LNP LSR from Bright House to Verizon, no carrier is situated to respond to Verizon's retention marketing efforts. This situation constitutes an undue or unreasonable advantage for Verizon.

2. Does Verizon timely complete porting of a subscriber's telephone number upon request of Bright House or Comcast, pursuant to Rule 25-4.082, F.A.C.?

**BHN:** In this proceeding, Bright House does not contest the *timeliness* of porting requests *completed* by Verizon. The problem is that, in those cases where Verizon engages in retention marketing to which a customer succumbs, Verizon does not complete the porting request *at all*. In these circumstances, Bright House contends that Verizon has failed to *facilitate* the porting of the subscriber's telephone number in accordance with the Rule. Specifically, Verizon exploits the industry-standard advance notice that Bright House must provide to Verizon in order to transition the subscriber to Bright House's network. Verizon uses this information (which it has obtained solely by virtue of its position as the incumbent carrier and current provider to the subscriber won by Bright House) to engage in targeted marketing efforts to retain the subscriber before the porting process has been completed. Such efforts are clearly aimed at

preventing or reversing the transfer of the number to Bright House's network. Thus, Verizon's retention marketing *interferes* with the porting of the subscriber's telephone number to Bright House's network. Such interference is contrary to the plain language of Rule 25-4.082, F.A.C.

3. Is Verizon's retention marketing program for voice customers anti-competitive, in violation of Section 364.01(4)(g)? Why or why not?

**BHN:** Yes. Verizon's entire retention marketing program is premised on the exploitation of Bright House's proprietary, competitively sensitive information. Bright House is required by industry standard procedures to reveal highly proprietary information to Verizon; specifically, which soon-to-be-former Verizon customers have decided to leave Verizon on which specific dates. Bright House would never voluntarily reveal this information to a competitor such as Verizon, and it is anticompetitive in the extreme for Verizon to exploit this highly sensitive wholesale information for its own retail marketing efforts during the period that the customer transition to Bright House is pending. This gives Verizon an unfair advantage in the market and has the effect of diminishing the effectiveness of, and raising the cost of, Bright House's marketing efforts. Moreover, Verizon does not obtain this marketing information through its own market research, or from customers contacting Verizon on their own. This is not, therefore, true competition "on the merits." Instead, Verizon learns this information solely by virtue of its control over the process of disconnection of subscribers, and porting subscribers' numbers, from its network. Thus, Verizon's retention marketing program misappropriates the significant market data that enabled Bright House to win the customer from Verizon in the first instance. The immediate detrimental effects of Verizon's retention marketing practice include lost customers and revenues for Bright House, as well as the lost value of the market research

done by Bright House. Furthermore, any short term "benefits" that targeted customers may derive from Verizon's retention marketing are greatly outweighed by the long term negative effects of Verizon's practice, which include reduced market penetration by Bright House and, consequently, fewer competitive alternatives in Verizon's territory.

4. What action, if any, should the Commission take with respect to Verizon's retention marketing program?

**BHN:** The Commission should issue an order directing Verizon to entirely terminate its practice of retention marketing to those customers as to whom Verizon's only knowledge of the pending disconnection came from Bright House. The Commission should further order Verizon to apply a 10-day "quiet" period following a customer's initial transfer, unless the ILEC's retail marketing operations independently and legitimately obtain information that the customer is leaving Verizon's network.

G. Stipulated Issues

The parties have not stipulated any issues to date.

H. Pending Motions

Bright House has a pending Request for Qualified Representative Status for Christopher W. Savage, filed December 11, 2007.

I. Pending Confidentiality Requests

Bright House has one pending Request for Confidential Classification, filed on May 30, 2008, regarding certain information in the Direct Testimony of Timothy M. Freundberg.

J. Compliance With Order on Procedure

Bright House believes that this Prehearing Statement fully complies with the requirements of the Order Establishing Procedure, Order No. PSC-08-0213-PCO-TL, issued April 10, 2008, as modified by Orders Nos. PSC-08-0325-PCO-TP and Order No. PSC-08-0344-PCO-TP.

K. Objections to Witness Qualifications

Bright House has no objection to the qualifications of any expert witness.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2008.

By: Beth Keating

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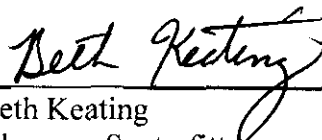
*Attorneys for Bright House Networks  
Information Services, LLC and Bright  
House Networks, LLC*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail, U.S. Mail First Class, or Hand Delivery this 25th day of July, 2008, to the persons listed below:

Dulaney L. O'Roark, III, VP/General Counsel Verizon Florida, LLC P.O. Box 110, MC FLTC 0007 Tampa, FL 33601 de.oroark@verizon.com	David Christian Verizon Florida, Inc. 106 East College Ave. Tallahassee, FL 32301-7748 David.christian@verizon.com
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